



D a v i s G r a h a m & S t u b b s L L P

July 23, 2009

***CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBMITTED UNDER FRE 408
NOT ADMISSIBLE IN EVIDENCE***

Via Email

Cliff Villa
USEPA Region X, ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Darrell Early
Deputy Attorney General
Office of the Idaho Attorney General
1410 N. Hilton
Boise, ID 83706

Re: Union Pacific Railroad Company Proposal on Past BPRP Costs –
Wallace Yard and Spur Lines Site

Dear Cliff and Darrell:

Our client, Union Pacific Railroad Company ("UPRR") and its consultants have reviewed the summaries of past Basin Property Remediation Program costs that the Idaho Department of Environmental Quality ("IDEQ") calculated for work that it performed in residential yards within the former Washington-Idaho Rail Road right-of-way in Canyon Creek beginning in 2002. The most recent summary that we have is one dated March 20, 2009. If there is a more recent summary, please advise.

UPRR objects to the following costs in the March 20, 2009 summary:

1. Idaho ID No. 07-0361 70 Burke Rd., Wallace, ID

The area that IDEQ assigned to UPRR is 1587.96 sq. ft. That area includes a sidewalk, and the area allocated to UPRR therefore should be reduced by the area covered by the sidewalk or 64.78 sq. ft. Making that correction reduces the amount to be charged to UPRR by \$322.60, leaving an amount of \$7,585.44.

Gail L. Wurtzler . 303 892 7405 . gail.wurtzler@dgsllaw.com

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2. Idaho ID No. 08-0559 108 Ninemile Rd., Wallace, ID

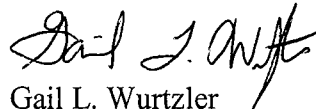
UPRR objects to the entire amount of \$76,422.00 charged for this location. This property is not on the right-of-way for any rail line. In fact, the Ninemile right-of-way is on the other side of Ninemile Creek from this property and was abandoned before UPRR acquired this property. Therefore, there is no basis to argue that any mine waste material found on this property came from railroad operations, or that any BPRP or other response costs associated with this property should be attributed to UPRR.

UPRR, the property owner, was never offered, and never signed, a "Coeur d'Alene Basin Consent Agreement – Access, Arbitration, Warranty and Work Completion" form agreement for work on this property. No authorized UPRR representative signed a form agreement. Although Mr. Grebil, a tenant under a lease from UPRR for only part of the property, did sign a form agreement, he was not authorized by UPRR to consent to this work on his lease or the remainder of this property. If IDEQ had asked UPRR to sign such a form agreement, UPRR would have treated this property in the same manner as the two residential locations in Wallace Yard that were addressed in the EE/CA for this site. UPRR would have terminated the lease, cleared the property, and ended any residential use of the property.

If these two adjustments are made, for settlement purposes only, we would recommend to UPRR that it pay as part of an overall settlement at the Wallace Yard and Spur Lines Site the remaining amount requested by the IDEQ, namely \$655,094.12. Of course, this is subject to UPRR management approval and the parties reaching agreement on the other items involved in an overall settlement.

We look forward to future discussions with you regarding this Site. Please call me or Bob Lawrence if you have any questions. Thank you.

Sincerely,



Gail L. Wurtzler
for

DAVIS GRAHAM & STUBBS LLP

GLW/amg

cc: R. Bylsma
G. Honeyman
R. Lawrence